

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA	:	
	:	
	:	
Plaintiff,	:	
	:	Civil No. 3:13cv3304
v.	:	
	:	
THE SHERWIN-WILLIAMS COMPANY,	:	
	:	
Defendant.	:	

**CONSENT DECREE**

**TABLE OF CONTENTS**

I. BACKGROUND .....	1
II. JURISDICTION .....	1
III. PARTIES BOUND .....	1
IV. DEFINITIONS .....	2
V. PAYMENT OF RESPONSE COSTS .....	3
VI. FAILURE TO COMPLY WITH CONSENT DECREE .....	5
VII. COVENANTS BY PLAINTIFF .....	6
VIII. RESERVATIONS OF RIGHTS BY UNITED STATES .....	6
IX. COVENANTS BY SETTLING DEFENDANT .....	7
X. EFFECT OF SETTLEMENT/CONTRIBUTION .....	8
XI. ACCESS TO INFORMATION .....	9
XII. RETENTION OF RECORDS .....	10
XIII. NOTICES AND SUBMISSIONS .....	11
XIV. RETENTION OF JURISDICTION .....	12
XV. INTEGRATION/APPENDICES .....	12
XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT .....	12
XVII. SIGNATORIES/SERVICE .....	13
XVIII. FINAL JUDGMENT .....	13

## I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607 ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Eagle Zinc Site in the City of Hillsboro, Montgomery County, Illinois ("the Site").

B. The defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its successors and assigns or other entities or persons bound by law. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

#### IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

“Eagle Zinc Special Account” shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(f)(3).

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States and Settling Defendant.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendant” shall mean The Sherwin-Williams Company.

“Site” shall mean the Eagle Zinc Superfund site, encompassing approximately 132 acres, located at Industrial Park Drive in the City of Hillsboro, Montgomery County, Illinois, and generally shown on the map included in Appendix A as well as the areas to which hazardous substances released at the Eagle Zinc site have migrated.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

#### V. PAYMENT OF RESPONSE COSTS

4. Payment by Settling Defendant for Response Costs. Within 45 days after Settling Defendant signs this Consent Decree, Settling Defendant shall deposit \$1,350,000 into an interest-bearing escrow account in a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation (“Escrow Account”). Such monies shall remain in escrow until entry of the Decree. If the Consent Decree is entered by the Court after the time for objections has run and no objections have been received from any third-party intervenor, Settling Defendant shall, within 45 days of entry, cause the monies in the Escrow Account, including accrued interest, to be paid to EPA in accordance with Paragraphs 5 and 6 below. If the Consent Decree is entered by the Court over the objection of any third-party intervenor and there is no appeal by any such third-party intervenor within the time for any appeal of that decision, Settling Defendant shall, within 45 days from the end of the appeal period, cause the monies in the Escrow Account, including accrued interest, to be paid to EPA in accordance with Paragraphs 5 and 6 below. If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run, or if the Court’s denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Defendant.

5. Payment by Settling Defendant shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Central District of Illinois after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to:

Donald J. McConnell, Environmental Counsel  
The Sherwin-Williams Company  
101 Prospect Avenue, NW  
Cleveland, OH 44115  
(216) 566-3741  
[don.j.mcconnell@sherwin.com](mailto:don.j.mcconnell@sherwin.com)

on behalf of Settling Defendant. Settling Defendant may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIII (Notices and Submissions).

6. At the time of payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions), and by email to EPA and DOJ at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov) and [EESCaseManagement.ENRD@usdoj.gov](mailto:EESCaseManagement.ENRD@usdoj.gov), or by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

and

[EESCaseManagement.ENRD@usdoj.gov](mailto:EESCaseManagement.ENRD@usdoj.gov)  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, DC 20044-7611  
Re: DOJ No. 90-11-3-08502/2

Such notice shall reference the CDCS Number, Site/Spill ID Number B5Y7, and DOJ case number 90-11-3-08502/2.

7. \$1,215,000 of the total amount to be paid pursuant to Paragraph 4 (plus accrued interest on that amount) shall be deposited by EPA in the Eagle Zinc Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund. \$135,000 of the total amount to be paid pursuant to Paragraph 4 (plus accrued interest on that amount) shall be placed in an EPA state cost share account within the EPA Hazardous Substance Superfund and shall be applied towards the State's remedial action cost share at the Eagle Zinc site; if any of that amount remains after the State's cost share has been satisfied, the excess may be used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

## VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payments. If Settling Defendant fails to make any payment under Paragraph 4 (Payment by Settling Defendant for Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

9. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 4 (Payment by Settling Defendant for Response Costs) are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$1,250 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days after the date of the written demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by Fedwire Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference the CDCS Number, Site/Spill ID Number B5Y7, and DOJ Case Number 90-11-3-08502/2.

c. At the time of any stipulated penalty payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), or by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number B5Y7, and DOJ Case Number 90-11-3-08502/2.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only

be paid upon written demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

12. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section V or from performance of any other requirements of this Consent Decree.

#### VII. COVENANTS BY PLAINTIFF

13. Covenants for Settling Defendant by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. These covenants shall take effect upon receipt by EPA of the payments required by Paragraph 4 (Payment by Settling Defendant for Response Costs) and any Interest or stipulated penalties due thereon under Paragraph 8 (Interest on Late Payments) or Paragraph 9 (Stipulated Penalty). These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants extend only to Settling Defendant and its successors and assigns (solely in their capacity as successors or assigns) and does not extend to any other person.

#### VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

14. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenants by Plaintiff in Paragraph 13. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability based upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant;

e. liability based on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences after signature of this Consent Decree by Settling Defendant;

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site; and

g. liability to the United States for reimbursement of response costs if total response costs incurred or to be incurred at or in connection with the Site by the United States or any other person exceed \$75 million.

15. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all Response Actions authorized by law.

#### IX. COVENANTS BY SETTLING DEFENDANT

16. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Illinois, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site.

17. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

18. Claims Against De Micromis Parties. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site against any person where the person's liability to Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

19. The waiver in Paragraph 18 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

20. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for response costs relating to the Site against any person that has entered into a final settlement with the United States with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

#### X. EFFECT OF SETTLEMENT/CONTRIBUTION

21. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section IX (Covenants by Settling Defendant), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. 9613 § (f)(2)-(3), to pursue any such persons to

obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

22. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if the United States exercises rights under the reservations in Section VIII (Reservations of Rights by United States), other than in Paragraphs 14.a (liability for failure to meet a requirement of Consent Decree) or 14.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

23. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability and validity of the Covenants by Plaintiff set forth in Section VII.

## XI. ACCESS TO INFORMATION

25. Within thirty (30) days of a written request from EPA, Settling Defendant shall provide to EPA, upon request, copies of all records, reports, or information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

26. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the Records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Defendant.

b. Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing Records, it shall provide Plaintiff with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all Records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld from the United States on the grounds that they are privileged or confidential.

27. No claim of confidentiality or privilege shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## XII. RETENTION OF RECORDS

28. Until five years after the Effective Date, Settling Defendant shall preserve and retain all non-identical copies of Records (including records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

29. After the conclusion of the five-year document retention period in the preceding Paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such Records to EPA. Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of

the subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all Records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

30. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

### XIII. NOTICES AND SUBMISSIONS

31. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to EPA, DOJ, and Settling Defendant, respectively.

#### As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-3-08502/2

#### As to EPA:

Thomas Krueger  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Blvd, Mail Code C-14J  
Chicago, IL 60604

Nefertiti DiCosmo  
Remedial Project Manager  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Blvd, Mail Code SR-6J

Chicago, IL 60604

Comptroller  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Blvd, Mail Code MF-10J  
Chicago, IL 60604-3590

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

As to Settling Defendant:

Donald J. McConnell, Environmental Counsel  
The Sherwin-Williams Company  
101 Prospect Avenue, NW  
Cleveland, OH 44115

#### XIV. RETENTION OF JURISDICTION

32. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

#### XV. INTEGRATION/APPENDICES

33. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

#### XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

34. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

35. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### XVII. SIGNATORIES/SERVICE

36. Each undersigned representative of Settling Defendant to this Consent Decree and the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

37. Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

38. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

#### XVIII. FINAL JUDGMENT

39. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.


SO ORDERED THIS 7<sup>th</sup> DAY OF November, 2013.

s/ Richard Mills  
United States District Judge


Signature Page for Consent Decree Regarding Eagle Zinc Superfund Site

8/28/13  
Date

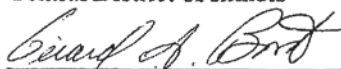
FOR THE UNITED STATES OF AMERICA:

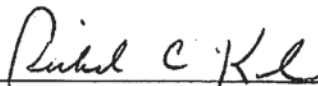
  
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Signature Page for Consent Decree Regarding Eagle Zinc Superfund Site

A handwritten signature in black ink, appearing to read 'Thomas Krueger', is written over a horizontal line.

Thomas Krueger  
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U.S. Environmental Protection Agency  
Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Signature Page for Consent Decree Regarding Eagle Zinc Superfund Site

**FOR THE SHERWIN-WILLIAMS COMPANY:**

June 25-2013

Date



Cathy Kilbane  
Vice President and General Counsel  
The Sherwin-Williams Company  
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